HIS ROYAL HIGHNESS SULTAN ISMAIL PETRA IBNI ALMARHUM SULTAN YAHYA PETRA

v.

HIS ROYAL HIGHNESS TENGKU MAHKOTA TENGKU MUHAMMAD FARIS PETRA & ANOR AND ANOTHER CASE

FEDERAL COURT, PUTRAJAYA
ZULKEFLI MAKINUDIN FCJ
RAUS SHARIF FCJ
ABDULL HAMID EMBONG FCJ
[SUIT NOS: 1-2010 & 2-2010]
26 NOVEMBER 2010

CONSTITUTIONAL LAW: *Sovereignty - Regency - Whether Regent may assume full powers of a Sultan when acting during Sultan's incapacitation - Whether Regent is vested with all powers of "His Royal Highness" - Distinction between powers exercised by a Regent and powers exercised by a reigning Sultan - Royal prerogatives of Regent to appoint or revoke appointment of Members of Council of Succession - Royal prerogatives of Regent to confer or revoke State Titles, Dignities and Honours*

CONSTITUTIONAL LAW: *Sovereignty - Sultan, powers of - Powers of Sultan during incapacitation and pendency of Regency - Whether incapacitated Sultan may exercise powers attributed to "His Royal Highness" - Whether incapacitated Sultan has locus to refer a question of law to the Federal Court - Article LXIII(2) First Part and art. IV(4) Second Part of the Laws of the Constitution of Kelantan*

Two petitions were filed by the petitioner, the then Sultan of Kelantan, pursuant to art. LXIII(2) First Part and art. IV(4) Second Part of the Laws of the Constitution of Kelantan ('the Constitution') seeking relief and opinion of the Federal Court on a number of questions. In both petitions, the petitioner challenged the authority of the first respondent, the Regent of the State of Kelantan ('Regent') in assuming the full power of the Sultan of Kelantan, as if the petitioner was no longer the Sovereign of the State. By reason of the petitioner's illness, the first respondent was appointed as Regent by the Council of Succession. In the first petition the petitioner raised the following questions: (a) Whether the first respondent as the Regent, acting during the petitioner's incapacitation, was entitled to assume for himself the full powers of the Sultan, to so conduct himself as if the petitioner was no longer the Sovereign of the State; and (b) Whether the first respondent as the Regent, acting as such during the petitioner's incapacitation, had the power or authority: (i) to remove any member of the Council of Succession appointed by the petitioner; (ii) to appoint persons to be members of the Council of Succession; (iii) to confer any State Titles, Dignities and Honours of the State; and (iv) to strip any person of any Titles, Dignities and Honours of the State which the petitioner had conferred upon such person, or to degrade or withdraw any Titles, Dignities and Honours the petitioner had conferred. In the second petition the petitioner raised the issues whether the first respondent as the Regent had the power or authority to (a) restrict the petitioner's movement to within the confines of the Istana Mahkota, Kubang Kerian, Kelantan; (b) confine the movement of the petitioner to within the State of Kelantan; (c) impose restrictions on the petitioner's right to be medically treated by doctors, and at a hospital of his own choice; and (d) direct the Commander of Royal Malaysian Air Force, Gong Kedak Air Base, Terengganu not to allow the petitioner to be flown out of the State of Kelantan by any airplane from the Gong Kedak Air Base except with the Regent's prior approval. Counsel for the first respondent raised a jurisdictional on whether the petitioner had the jurisdiction to refer the questions of law to the Federal Court pursuant to art. LXIII (2) First Part of the Constitution notwithstanding the fact that there existed a Regency in place.

Held (allowing the jurisdictional objection of the first respondent and dismissing both the petitions with no order as to costs)
Per Zulkefli Makinudin FCJ delivering the judgment of the court:

(1) As the then Regent, the first respondent was vested with all the powers of "His Royal Highness" within the meaning of the First Part and the Second Part of the Constitution. There is no distinction between the powers exercised by the first respondent when he was the Regent and the powers exercised by a reigning Sultan regardless of whether the first respondent was appointed by the Council of Succession or by the then Sultan. (para 14)

(2) The distinction between the words "Regent" and "Sovereign" does not have any effect on the royal prerogatives of the first respondent to appoint or revoke the appointment of any Members of the Council of Succession under the Constitution and in referring a question of law pursuant to art. LXIII(2) First Part of the Constitution. (para 18)

(3) The definition of "His Royal Highness" includes the Regent. The Constitution had envisaged for the Regent to have all the powers and to carry out the royal functions as the Sultan of Kelantan would have had His Royal Highness the Sultan of Kelantan not been incapacitated. (para 23)

(4) During the incapacitation of the petitioner and during the pendency of the Regency the petitioner cannot exercise the powers of "His Royal Highness" under the Constitution. This is because due to the incapacitation of the petitioner as the then Sultan, it is the Regent alone who is to exercise the powers attributed to "His Royal Highness" under the Constitution. The petitioner could only exercise such powers upon returning to the State of Kelantan and assuming office as the Sultan. The petitioner did not do so upon returning to Kelantan on or about March 2010. In fact the petitioner remained incapacitated and the first respondent continued to act as the Regent. The petitioner was thus not permitted to exercise any power vested with "His Royal Highness" whilst there existed a Regency. (para 24)

(5) The petitioner had no locus to refer a question of law to the Federal Court pursuant to art. LXIII(2) First Part of the Constitution whilst the first respondent was the Regent, as the power to do so was vested solely in the hands of the first respondent until the Regency was brought to an end and the petitioner resuming his role as the Sultan. (para 27)

Bahasa Malaysia *Translation Of Headnotes*

Dua petisyen telah difailkan oleh pempetisyen, Sultan Kelantan pada masa itu, di bawah Fasal LXIII(2) Bahagian Pertama dan Fasal IV(4) Bahagian Kedua Undang-Undang Perlembagaan Negeri Kelantan ('Perlembagaan') bagi mendapatkan relif dan pandangan Mahkamah Persekutuan berkaitan beberapa persoalan. Dalam kedua-dua petisyen, pempetisyen telah mencabar kuasa responden pertama, Tengku Mahkota Kelantan ('Pemangku Raja'), kerana mengambilalih sepenuhnya kuasa-kuasa Sultan Kelantan, seolah-olah pempetisyen bukan lagi Raja Berdaulat Negeri Kelantan. Ekoran kehilangan upaya yang melanda pempetisyen, responden pertama telah dilantik sebagai Pemangku Raja oleh Majlis Pertabalan. Dalam petisyen pertama, pempetisyen membangkitkan persoalan-persoalan

A berikut: (a) sama ada responden pertama selaku Pemangku Raja, dan bertindak semasa pempetisyen hilang upaya, berhak mengambilalih sepenuhnya kuasa-kuasa Sultan, dan seterusnya bertindak seolah-olah pempetisyen bukan lagi Raja Berdaulat Negeri Kelantan; dan (b) sama ada responden pertama selaku Pemangku Raja, dan bertindak sebagai Pemangku Raja semasa pempetisyen hilang B upaya, mempunyai kuasa untuk: (i) menggugurkan mana-mana ahli Majlis Pertabalan; (ii) melantik mana-mana orang sebagai ahli Majlis Pertabalan; (iii) menganugerahkan mana-mana Pingat Kebesaran, Pangkat atau Kemuliaan Negeri; dan (iv) melucutkan dari mana-mana orang Pingat Kebesaran, Pangkat atau Kemuliaan Negeri C yang telah dianugerahkan oleh pempetisyen kepada orang-orang tersebut, atau merendahkan atau menarik balik mana-mana Pingat Kebesaran, Pangkat atau Kemuliaan yang telah dianugerahkan oleh pempetisyen. Dalam petisyen kedua, pempetisyen membangkitkan isu sama ada responden pertama selaku Pemangku Raja mempunyai D kuasa atau autoriti untuk (a) menghadkan pergerakan pempetisyen hanya di kawasan Istana Mahkota, Kubang Kerian, Kelantan; (b) menghadkan pergerakan pempetisyen hanya di Negeri Kelantan; (c) mengenakan halangan terhadap hak pempetisyen untuk mendapatkan rawatan doktor dan di hospital pilihan pempetisyen; E dan (d) mengarahkan Pegawai Pemerintah Tentera Udara DiRaja Malaysia, Pengkalan Udara Gong Kedak, Terengganu supaya tidak membenarkan pempetisyen diterbangkan keluar dari Negeri Kelantan oleh kapal terbang dari Pengkalan Udara Gong Kedak, kecuali dengan kebenaran terdahulu Pemangku Raja. Peguam responden F pertama telah membangkitkan bantahan bidangkuasa berkaitan sama ada pempetisyen mempunyai bidangkuasa untuk merujuk persoalan-persoalan undang-undang ke Mahkamah Persekutuan di bawah Fasal LXIII (2) Bahagian Pertama Perlembagaan dalam keadaan di mana Pemangku Raja sudah sedia ada wujud. G

Diputuskan (membenarkan bantahan bidangkuasa responden pertama dan menolak kedua-dua petisyen tanpa sebarang perintah mengenai kos)
Oleh Zulkefli Makinudin HMP menyampaikan penghakiman mahkamah: H

(1) Sebagai Pemangku Raja pada masa itu, responden pertama telah dianugerahkan semua kuasa-kuasa "Duli Yang Maha Mulia" seperti yang dimaksudkan Bahagian Pertama dan Bahagian Kedua Perlembagaan. Tidak ada perbezaan antara kuasa-kuasa I yang dilaksanakan oleh responden pertama semasa beliau menjadi Pemangku Raja dan kuasa-kuasa yang dilaksanakan oleh Sultan semasa yang memerintah, tidak kiralah sama ada responden pertama telah dilantik oleh Majlis Pertabalan atau oleh Sultan pada masa itu.

(2) Perbezaan antara perkataan "Pemangku Raja" and "Raja Berdaulat" tidak mempunyai apa-apa kesan ke atas keistimewaan-keistimewaan di raja responden pertama untuk melantik atau membatalkan perlantikan mana-mana ahli Majlis Pertabalan di bawah Perlembagaan dan dalam merujuk suatu persoalan undang-undang di bawah Fasal LXIII(2) Bahagian Pertama Perlembagaan.

(3) Takrif "Duli Yang Maha Mulia" adalah termasuk Pemangku Raja. Perlembagaan telah membayangkan bahawa Pemangku Raja mempunyai semua kuasa-kuasa dan harus melaksanakan tanggungjawab-tanggungjawab di raja sepertimana yang dimiliki oleh Sultan Kelantan sekiranya Duli Yang Maha Mulia Tuanku tidak hilang upaya.

(4) Dalam tempoh pempetisyen hilang upaya dan sewaktu Pemangkuan Raja berjalan, pempetisyen tidak boleh melaksanakan kuasa-kuasa "Duli Yang Maha Mulia" di bawah Perlembagaan. Ini kerana disebabkan oleh kehilangan upaya pempetisyen sebagai Sultan pada masa itu, hanya Pemangku Raja seorang sahaja yang akan melaksanakan kuasa-kuasa yang diberikan kepada "Duli Yang Maha Mulia" di bawah Perlembagaan. Pempetisyen hanya boleh melaksanakan kuasa-kuasa tersebut apabila kembali ke Negeri Kelantan dan mengambil semula jawatan Sultan. Pempetisyen tidak berbuat begitu apabila kembali ke Negeri Kelantan pada atau lebih kurang bulan Mac 2010. Hakikatnya, pempetisyen masih dalam keadan hilang upaya dan responden pertama berterusan bertindak sebagai Pemangku Raja. Pempetisyen dengan itu tidak dibenarkan melaksanakan mana-mana kuasa yang diletakhak kepada "Duli Yang Maha Mulia" sementara Pemangkuan Raja masih wujud.

(5) Pempetisyen tidak mempunyai locus untuk merujuk persoalan undang-undang kepada Mahkamah Persekutuan di bawah Fasal LXIII(2) Bahagian Pertama Perlembagaan sementara responden pertama menjadi Pemangku Raja, kerana kuasa berbuat demikian telah diletakhak sepenuhnya di tangan responden pertama sehingga Pemangkuan Raja diberhentikan dan pempetisyen mengambil semula peranannya sebagai Sultan.

Case(s) referred to:

Dato' Seri Ir Hj Mohammad Nizar Jamaluddin v. Dato' Seri Dr Zambry Abdul Kadir; Attorney General (Intervener) [2010] 2 CLJ 925 FC ***(refd)***

Hinds & Ors. v. The Queen; Director of Public Prosecutions v. Jackson Attorney General of Jamaica (Intervener) [1976] 1 All ER 353 ***(refd)***

Legislation referred to:

Laws of the Constitution of Kelantan, arts. IV(4), VI, VII, VIIA, IX, X, XI, XII, XIII, XV(2)(b), (f), (g), XVI, XXIIA(1)(b), (2), (3), (4), (5), XXVIIA, XXXVI, XLII, XLIII, XLIV, LXIII(2)

For the petitioner - Azhar Azizan (Abdul Rashid Ismail with him); M/s Rashid Zulkifli

For the 1st respondent - Tan Sri Dato' Cecil Abraham (Sunil Abraham & Farah Shuhadah Razali with him); M/s Zul Rafique & Partners

For the 2nd respondent - Dato' Azlan Abdul Halim; State Legal Adviser

Watching brief for A-G's Chambers - Datin Hjh Azizah Hj Nawawi (Suzana Atan with him) SFCs

Reported by Amutha Suppayah

JUDGMENT

Zulkefli Makinudin FCJ:

Introduction

[1] There are two suits filed by way of a petition by the petitioner: Suit No. 1 of 2010 (first petition) and Suit No. 2 of 2010 (second petition). Both petitions have been consolidated. The petitioner, at the time of filing of these petitions is the Sultan of Kelantan. In both petitions, the petitioner is challenging the authority of the first respondent, the Regent of the State of Kelantan, the eldest son of the petitioner, in assuming the full power of the Sultan of Kelantan, as if the petitioner was no longer the Sovereign of the State. The petitioner in both petitions has also brought in the Government of the State of Kelantan, as the second respondent.

[2] Both the petitions are filed pursuant to art. LXIII(2) First Part and art. IV(4) Second Part of the Laws of the Constitution of Kelantan seeking relief and opinion of the Federal Court on a number of framed questions. Article LXIII(2) First Part of the Laws of the Constitution of Kelantan provides as follows:

> A (2) His Royal Highness may refer to the Federal Court for its opinion any question as to the effect of any provision of the Laws of the Constitution of the State which has arisen or appears to Him to be likely to arise, and the Federal Court shall pronounce in open court its opinion on any question so referred to it.

B Article IV(4) Second Part of the Laws of the Constitution of Kelantan is worded exactly the same as in the provision of art. LXIII(2) First Part of the Laws of the Constitution of Kelantan.

C **[3]** In the first petition the petitioner is seeking the opinion of the Federal Court and consequential orders arising from the opinion pronounced in respect of the following questions:

(a) Whether the first respondent as the Regent of the State, acting D during the petitioner's incapacitation, is entitled to assume for himself the full powers of the Sultan, to so conduct himself as if the petitioner was no longer the Sovereign of the State; and

(b) Whether the first respondent as the Regent of the State of Kelantan, acting as such during the petitioner's incapacitation, E has the power or authority:

  (i) to remove any member of the Council of Succession appointed by the petitioner;

  F (ii) to appoint persons to be members of the Council of Succession;

  (iii) to confer any State Titles, Dignities and Honours of the State of Kelantan; and

  G (iv) to strip any person of any Titles, Dignities and Honours of the State which the petitioner had conferred upon such person, or to degrade or withdraw any Titles, Dignities and Honours the petitioner had conferred.

H **[4]** In the second petition the petitioner is seeking the opinion of the Federal Court and consequential orders arising from the opinion pronounced in respect of the following questions:

(a) Whether the first respondent as the Regent has the power or I authority to restrict the petitioner's movement to within the confines of the Istana Mahkota, Kubang Kerian, Kelantan;

(b) Whether the first respondent as the Regent has the power or authority to confine the movement of the petitioner to within the State of Kelantan;

(c) Whether the first respondent as the Regent has the power or authority to impose restrictions on the petitioner's right to be medically treated by doctors, and at a hospital or other medical establishment, of his own choice; and

(d) Whether the first respondent as the Regent has the power or authority to direct the Commander of Royal Malaysian Air Force, Gong Kedak Air Base, Terengganu not to allow the petitioner to be flown out of the State of Kelantan by any airplane from the Gong Kedak Air Base, Terengganu, except with the Regent's prior approval.

Background Facts

[5] In support of the first petition the petitioner amongst others pleaded the following relevant facts:

(1) The petitioner is the one and true Sovereign of the State of Kelantan.

(2) As the Sovereign of the State, the petitioner has the power to appoint and remove members of the Council of Succession. The Council of Succession plays an important role under the Laws of the Constitution of Kelantan – it is the Council of Succession that must confirm the Successor to the Throne of the State.

(3) As at 14 May 2009, the following persons have been appointed by the petitioner to the Council of Succession:

    3.1 Tengku Abdul Aziz bin Tengku Mohd Hamzah (Tengku Sri Utama Raja) – President;

    3.2 Tengku Razaleigh bin Tengku Mohd Hamzah – Deputy President;

    3.3 Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra (Tengku Temenggong Kelantan);

    3.4 Dato' Tengku Rozan binti Al Marhum Sultan Yahya Petra;

3.5 Dato' Tengku Faridah binti Al Marhum Sultan Ibrahim;

3.6 Dato' Tengku Mohamad Rizam bin Tengku Abdul Aziz;

3.7 Dato' Haji Nik Sulaiman bin Dato' Haji Nik Daud (Dato' Bentara Kiri);

3.8 Dato' Haji Nik Ishak bin Dato' Haji Nik Daud;

3.9 Dato' Haji Wan Ismail bin Haji Wan Mohd Salleh;

3.10 Dato' Tengku Mahmood bin Tengku Abdul Hamid;

3.11 Dato' Haji Daud bin Muhammad (Dato' Aria D'Raja);

3.12 Ir. Dato' Haji Wan Hashim bin Haji Wan Ahmad (Dato' Bentara Dalam);

3.13 Dato' Haji Yusoff bin Haji Mohd. Othman (Dato' Biji Sura); and

3.14 Dato' Mohd Aiseri bin Alias.

(4) As Sovereign, the petitioner also has the Royal Prerogative to confer Titles, Dignities and Honours of the State of Kelantan upon individuals; and among the persons whom the petitioner has conferred such Titles were:

5.1 Dato' Haji Ahmad Rusli bin Haji Iberahim;

5.2 Dato' Tan Hua @ Tan Liang Chong;

5.3 Dato' Wan Hassan bin Wan Zin; and

5.4 Dato' Mohd Raihan bin Dato' Seri Dr. Eusuff Teh.

(5) On 14 May 2009, the petitioner was taken ill and admitted to the University Science Malaysia Hospital at Kubang Kerian, Kelantan. The petitioner was subsequently transferred to Mount Elizabeth Hospital in Singapore.

(6) By reason of the petitioner's illness, Tengku Mahkota, the first respondent was appointed as Regent of the State by the Council of Succession on 24 May 2009.

(7) On 15 September 2009 and 16 September 2009, the first respondent, purporting to exercise his power as Regent, removed the following members of the Council of Succession:

7.1 Dato' Haji Wan Ismail bin Haji Wan Mohd Salleh;

7.2 Dato' Haji Nik Sulaiman bin Dato' Haji Nik Daud (Dato' Bentara Kiri);

7.3 Ir. Dato' Tengku Mahmood bin Tengku Abdul Hamid;

7.4 Dato' Haji Yusoff bin Haji Mohd. Othman (Dato' Biji Sura); and

7.5 Tengku Muhamad Fakhry Petra (Tengku Temenggong Kelantan).

(8) The first respondent in purported exercise of his power as Regent, also striped the Titles from individuals mentioned in para. 4 hereof; namely:

8.1 Dato' Haji Ahmad Rusli bin Haji Iberahim;

8.2 Dato' Tan Hua @ Tan Liang Chong;

8.3 Dato' Wan Hassan bin Wan Zin; and

8.4 Dato' Mohd Raihan bin Dato' Seri Dr. Eusuff Teh.

(9) Between 24 May 2009 and 17 September 2009, the first respondent purporting to exercise his power as Regent, appointed the following persons as new members of the Council of Succession:

9.1 Dato' Haji Hashim bin Dato' Haji Yusoff;

9.2 Dato' Haji Mohamed Shukri bin Mohamad (the State Mufti);

9.3 Dato' Tengku Hajah Salwani binti Al-Marhum Sultan Yahya Petra;

9.4 Dato' Sukri bin Haji Mohamed;

9.5 Dato' Haji Che Mohd Rahim bin Jusoh; and

9.6 Kol. Dr. Mohammad Razin bin Kamarulzaman.

A (10) On or about 4 March 2010, the petitioner was discharged from Mount Elizabeth Hospital and had since returned to the State of Kelantan.

(11) The petitioner claimed as he had just recently been discharged B from hospital, he did not wish to have the usual public celebration of His Birthday this year, preferring to celebrate it in a more private and quiet way. The petitioner's wish was made known to the first respondent, the Prime Minister of Malaysia and the Menteri Besar of the State of Kelantan on C or about 17 February 2010. The petitioner also expressly informed the State Government of Kelantan and the first respondent that he would not be conferring any Titles, Dignities and Honours this year pursuant to art. XLIII Second Part of the Laws of the Constitution of Kelantan.

D (12) Inspite of the aforesaid declaration by the petitioner, the first respondent purporting to act in his capacity as Acting Sultan, continued with the preparations of, and on 30 March 2010 held a State function.

E (13) As part of the State function, the first respondent purporting to exercise his power as the Regent of the State, conferred various Titles, Dignities and Honours to various individuals.

(14) Even prior to the State function, the first respondent had on F 24 March 2010, purporting to exercise his power as the Regent of the State, conferred the highest State Title to the Yang Di Pertuan Besar Negeri Sembilan, Tuanku Muhriz Ibni Almarhum Tuanku Munawir at Istana Besar Seri Menanti, Negeri Sembilan.

G (15) The first respondent in purported exercise of his power as Regent, on 28 March 2010 appointed, Captain Tengku Datuk Ahmad Farizuanudean Khairi as an additional member of the Council of Succession.

H (16) The first respondent on 25 March 2010, removed his uncle, Tengku Sri Utama Raja Yang Mulia Tengku Abdul Aziz bin Tengku Mohd Hamzah, whom the petitioner had appointed to be the President of the Council of Succession, from that position. In his place, the first respondent appointed Tengku

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Laksamana Kelantan Tengku Abdul Halim Al Haj bin Al-Marhim Sultan Ibrahim as the purported new President of the Council of Succession.

(17) With the removals and new appointments, the membership of the Council of Succession stands at 18 members.

(18) The petitioner claimed that he is very concerned with the actions of the first respondent as Regent:

18.1 in removing from the Council of Succession persons whom the petitioner had personally appointed because of their loyalty to the petitioner and his family, and to the State of Kelantan;

18.2 in appointing new members of the Council of Succession; and

18.3 in so conducting himself, in his capacity as Regent, as if the petitioner was no longer the Sovereign of the State of Kelantan.

(19) It is the contention of the petitioner that the first respondent in the circumstances in which he removed the members of, and appointed new members to the Council of Succession, may have:

19.1 exceeded his powers as the Regent of the State of Kelantan;

19.2 usurped the petitioner's Royal Prerogative, Power and Authority as the true and one Sovereign of the State; and

19.3 acted in contravention of the Constitution of the State of Kelantan.

[6] After the filing of the first petition, the petitioner claimed that the first respondent had issued several directives purporting to restrict the petitioner's personal liberty and freedom. Aggrieved by these purported directives issued by the first respondent the petitioner filed the second petition.

[7] In support of the second petition the petitioner pleaded that one of the directives was contained in a letter dated 3 May 2010 issued to the Commander of Royal Malaysian Air Force, Gong Kedak Air Base, Terengganu, directing him not to allow the petitioner to be flown out of the State of Kelantan by any airplane using the Gong Kedak Air Base without the first respondent's prior approval. Another is a letter dated 9 May 2010 issued to Raja Perempuan of Kelantan, directing that the petitioner is not to leave the Istana Mahkota or the State of Kelantan without first securing the first respondent's prior approval and that the petitioner is to be treated only at the Istana Mahkota and by medical specialists from the State of Kelantan or specialists from within the country, unless otherwise advised. By yet another letter dated 17 May 2010 the first respondent directed that the petitioner could only leave for Singapore for medical treatment if a panel of doctors appointed by the Ministry of Health recommends that there is a need for the petitioner to seek medical treatment in Singapore by reason of the lack of expertise available in Malaysia and certifies that the petitioner is in a fit condition to travel. The petitioner claimed these directives have the effect of violating the petitioner's constitutional rights and fundamental liberties.

[8] The first respondent in his amended defences to both the petitions pleaded amongst others the following relevant facts:

(1) Due to the petitioner's ill health, the Council of Succession appointed the first respondent as the Regent of the State of Kelantan pursuant to art. XXIIA cl. 1(b) and cl. 3 Second Part of the Laws of the Constitution of Kelantan which appointment has not been revoked;

(2) In accordance with art. XXIIA(5) Second Part of the Laws of the Constitution of Kelantan, the first respondent is required to continue to act as the Regent until the petitioner recovers from such incapacitation;

(3) By virtue of the fact that the first respondent has been appointed the Regent, the Laws of the Constitution of Kelantan provides that the first respondent is to be vested with the powers of "His Royal Highness" within the meaning of the said Constitution;

(4) The crux of the dispute relates to Tengku Muhammad Fakhry Petra's discontent at being removed as a member of the Council of Succession by the first respondent in his capacity as the Regent on 16 September 2009;

(5) On 16 September 2009 Tengku Muhammad Fakhry Petra was notified by way of a letter from the Secretary to the Council of Succession that the first respondent had in his capacity as the Regent exercised his discretion to revoke Tengku Muhammad Fakhry Petra's appointment as a member of the Council of Succession which was to take effect from 16 September 2009;

(6) Tengku Muhammad Fakhry Petra was not the only person removed as a member of the Council of Succession on 16 September 2009. The following individuals were also removed from the Council of Succession as of 15 September 2009:

   (i) Dato' Hj. Wan Ismail bin Haji Wan Mohd Salleh;

   (ii) Dato' Hj. Nik Sulaiman bin Dato' Hj. Nik Daud;

   (iii) Ir. Dato' Tengku Mahmood bin Tengku Abdul Hamid; and

   (iv) Dato' Hj. Yusoff bin Hj. Md. Othman.

(7) Tengku Muhammad Fakhry Petra took no immediate action following his removal as a member of the Council of Succession. Rather, he waited until 25 October 2009 to issue a letter to the Secretary of the Council of Succession stating *inter alia*, that:

   (i) He required an explanation as to what was the basis or reasons for his removal as a member of the Council of Succession;

   (ii) His appointment to the Council of Succession was made by the Sultan of Kelantan and only the Sultan of Kelantan could remove him; and

   (iii) Unless an explanation was provided within seven days from the date of the applicant's letter dated 25 October 2009, he would take it that the Council of Succession had failed and/or neglected to provide any reasons for his removal from the said Council of Succession thereby leaving him no choice but to seek recourse before the courts.

(8) On 26 October 2009 the Secretary to the Council of Succession informed Tengku Muhammad Fakhry Petra by way of a letter stating *inter alia* that the decision to remove him was made by the first respondent in his capacity as the Regent 16 September 2009.

(9) Thereafter, in the first respondent's capacity as the Regent, the first respondent appointed the following individuals as members of the Council of Succession to take effect from 16 September 2009 and 17 September 2009:

  (i) Dato' Haji Hashim bin Dato' Haji Yusoff;

  (ii) Dato' Haji Mohamad Shukri bin Mohamad;

  (iii) Dato' Tengku Hajah Salwani binti Al-Marhum Sultan Yahya Petra;

  (iv) Dato' Sukri bin Haji Mohamed;

  (v) Dato' Haji Che Mohd Rahim bin Jusoh; and

  (vi) Kol. Dr. Mohammad Razin bin Kamarulzaman.

(10) Given the petitioner's incapacity, the petitioner would not be in a fit and proper condition to "expressly inform the State Government of Kelantan that he would not be conferring any Titles, Dignities of Honours or issue any proclamations whatsoever".

(11) The first respondent exercise his discretion as the Regent pursuant to art. VII Second Part of the Laws of the Constitution of Kelantan in removing Tengku Abdul Aziz bin Tengku Mohd Hamzah as the President of the Council of Succession and appointing Tengku Abdul Halim Al Haj bin Al-Marhum Sultan Ibrahim as the new President of the Council of Succession.

(12) In the first respondent's capacity as the Regent, the first respondent may act in his discretion and exercise the right and authority to appoint, revoke or dismiss or discharge any person of any Titles, Honours or Dignities.

(13) At no material time has the first respondent conducted himself in such a manner that the Sultan of Kelantan is no longer the Sovereign within the meaning of the Laws of the Constitution of Kelantan.

(14) At no material time has the first respondent exceeded his powers as the Regent and usurped the royal prerogative, power and authority of the petitioner.

(15) The first respondent issued the directives restricting the movement of the petitioner contained in the letters dated 3 May 2010, 9 May 2010 and 17 May 2010 in his capacity as the Regent of Kelantan and current Head of the Kelantan Royal Household as well as next of kin out of concern for the petitioner's health and well-being.

(16) The first respondent did not want the petitioner's ill health and medical condition to be utilized by Tengku Muhammad Fakhry Petra for his personal gain.

(17) On 9 July 2010 the first respondent instructed the office of the Sultan of Kelantan to issue a statement to the effect that the petitioner is free to travel abroad.

(18) On 14 July 2010 the petitioner travelled freely to Singapore for medical treatment. At no material time did the first respondent prohibit or restrain the petitioner from leaving the State of Kelantan.

Jurisdictional Objection

[9] When both the parties appeared at the stage of Summons for Directions of these two suits, learned counsel for the first respondent, Tan Sri Cecil Abraham had indicated that he would be raising a jurisdictional objection before hearing the merits of the two petitions. The objection relates to the question of whether the petitioner has the jurisdiction to refer the questions of law to the Federal Court pursuant to art. LXIII (2) First Part of the Laws of the Constitution of Kelantan notwithstanding the fact that there exists a Regency in place. The panel of this court constituted to hear these two petitions on the hearing date henceforth invited arguments from the parties to submit on this issue first as to whether the Federal Court has the jurisdiction to hear the petitions against the first respondent.

[10] For the purpose of arguments by the parties on the jurisdictional objection of the first respondent, we shall deal with the issues raised under the first petition filed by the petitioner in arriving at our decision. Our decision on this jurisdictional objection by the first respondent in respect of the first petition will equally apply on the jurisdictional objection of the first respondent in respect of the second petition.

Contention Of The First Respondent

[11] Learned counsel for the first respondent's primary grounds in support of the jurisdictional objection as in his submission before us can be set out and summarized as follows:

(a) At the time of the filing of these two actions, the first respondent was the Regent of Kelantan and is defined as "His Royal Highness" in accordance with the express provisions of Article IV First Part of the Laws of the Constitution of Kelantan. The first respondent is now His Royal Highness, Sultan Muhammad V, the present Sultan of Kelantan.

(b) The first respondent as the then Regent of Kelantan carried out the functions as the acting Ruler due to the petitioner's present incapacitation;

(c) The first respondent as His Royal Highness carries out numerous royal functions similar to that of the Sultan of Kelantan had His Royal Highness, the Sultan of Kelantan not been incapacitated.

(d) Only one person may exercise the powers of "His Royal Highness" at any one time. Due to the incapacitation of the petitioner and the existence of a Regency, such a power can only be exercised by the first respondent as the Regent of Kelantan at the material time.

(e) There is no express provision within the Laws of the Constitution of Kelantan or in law which supports the petitioner's contention that the fact that the first respondent was appointed by the Council of Succession is of a lesser effect than had the first respondent been appointed Regent of Kelantan by the Sultan of Kelantan.

(f) Pursuant to art. VII Second Part of the Laws of the Constitution of Kelantan, the first respondent as His Royal Highness acting in his discretion has the right and authority to revoke the appointment of or dismiss and discharge any members of the Council of Succession.

(g) The petitioner has no jurisdiction to refer a question of law pursuant to art. LXIII(2) First Part of the Laws of the Constitution of Kelantan pending the existence of a Regency due to the incapacitation of the petitioner.

Contention Of The Petitioner

[12] Learned counsel for the petitioner, Encik Azhar bin Azizan @ Harun in reply to the first respondent's jurisdictional objection relied *inter alia* on the grounds which can be summarized as follows:

(a) Notwithstanding the Council of Succession's appointment of the first respondent as Regent on 24 May 2009, the petitioner is still the Sultan, Sovereign and Ruler of the State of Kelantan.

(b) The first respondent as the Regent cannot exist on his own or in vacuum. He exists because the Sultan is incapacitated. Just because the Sultan is incapacitated it does not mean that the petitioner is not in a position to ask the Federal Court for its opinion on the questions framed.

(c) The first respondent as the Regent does not take over exclusively the role of the Sultan. The Regent being a caretaker ruler can only perform those duties which a Sultan is required by the Laws of the Constitution of Kelantan to perform but which he cannot do because of his incapacitation. The petitioner as the Sultan does not surrender all his powers to the Regent.

(d) The first respondent as the Regent is not conferred the full powers of the Sultan whilst acting as Regent. The Regent is not a Sultan, Sovereign or Ruler. The Regent is only to have the right to exercise the powers which are necessary to attend to the affairs of the State.

(e) The definition of "High Royal Highness" in art. IV First Part of the Laws of the Constitution of Kelantan to include the Regent is subject to an important rider, that is the Regent can

A only fall within the definition of "His Royal Highness" "where the context admits". The phrase "His Royal Highness" does not necessarily refer to the Regent under the relevant provisions of the Laws of the Constitution of Kelantan. The phrase "His Royal Highness" will always refer to the Sultan.

B

Decision

[13] We shall now deal with the factual circumstances and the questions of law posed for our determination under the first petition in deciding whether there is merit on the jurisdictional objection C raised by the first respondent. The petitioner's principal complaint which has brought about the parties before this court is focused on the first respondent's purported exercise of his discretionary powers as a Regent in revoking Tengku Muhammad Fakhry Petra's appointment as a Member of the Council of Succession amongst D others and in effecting the appointment of other individuals as the new members of the Council of Succession. To the petitioner, the first respondent is not empowered to exercise such a discretion in the performance of his royal functions as a Regent in the revocation and appointment of the members of the Council of Succession. E Instead it was argued for the petitioner that these powers can only be exercised by the petitioner personally as the Sultan of Kelantan.

[14] We are of the view that as the then Regent of Kelantan, the first respondent is vested with all the powers of "His Royal F Highness" within the meaning of the First Part and the Second Part of the Laws of the Constitution of Kelantan. There is no distinction between the powers exercised by the first respondent when he was the Regent of Kelantan and the powers exercised by a reigning Sultan regardless of whether the first respondent was G appointed by the Council of Succession or by the then Sultan of Kelantan.

[15] It is the contention of the petitioner that any decision made by first respondent in the exercise of his duties as the Regent H during the incapacitation of the Sultan has a somewhat lesser effect solely because he was appointed by the Council of Succession instead of being appointed by the Sultan of Kelantan himself. We would like to state here that amongst the duties of the Council of Succession as provided under arts. VI and IX Second Part of the I Laws of the Constitution of Kelantan, are to confirm the Heir as reigning Sovereign and to choose and appoint a Sovereign on failure of eligible Heirs or refusal to confirm any of the eligible Heirs. Article XXIIA(3) Second Part of the Laws of the Constitution of Kelantan further provides that the Council of Succession shall appoint a Regent or Council of Regency in the case of incapacitation of the Sovereign. It is observed that the Council of Succession only exercises its duties and powers in circumstances when there is no reigning Sovereign or when the Sovereign is incapacitated. In this context therefore it would be incorrect for the petitioner to make a comparison as to the status of a Regent appointed by the Sovereign with that of a Regent appointed by the Council of Succession.

[16] It is also to be noted that there is no express provision within the Laws of the Constitution of Kelantan which lends support to the petitioner's contention that the appointment of the Regent by the Council of Succession is of lesser effect than had the Sovereign appointed the first respondent as the Regent. Such an assertion is unsupported in law. Moreover we are of the view that if the same Council of Succession has the power conferred by the Laws of the Constitution of Kelantan to choose and confirm the next Sovereign and determine the capacity of the Sultan of Kelantan himself, it would necessarily follow that a Regent appointed by the very same Council of Succession as in this case would have the same power to exercise the royal functions provided under the Laws of the Constitution of Kelantan.

[17] The petitioner further contended that different powers would be vested on a Regent depending on the mode in which the Regent is appointed, that is whether appointed by the Council of Succession or by the Sultan of Kelantan himself as the Sovereign. This is so as according to the petitioner the alleged crucial phrase of allowing the Regent to exercise the functions as Ruler is missing in art. XXIIA(3) Second Part of the Laws of the Constitution of Kelantan unlike as provided for in art. XXIIA(2) and art. XXIIA(4) Second Part of the Laws of the Constitution of Kelantan whenever the Sovereign himself appointed a Regent to exercise his functions. For easy reference we reproduce in full the provision of art. XXIIA Second Part of the Laws of the Constitution of Kelantan as follows:

XXIIA.

(1) There shall be a Regency in the State under the following conditions, that is to say -

(a) if the Sovereign shall have occasion to be absent from the State for more than thirty days;

(b) if the Sovereign shall be incapacitated from attending to the affairs of the State: or

(c) if the Sovereign is elected to the office, or exercise the functions, of the Yang di-Pertuan Agong for a period exceeding fifteen days.

(2) In the case of the intended absence of the Sovereign He shall appoint a Regent or Council of Regency as to Him seems most expedient to exercise His functions during His absence from the State.

(3) In the case of the incapacitation of the Sovereign the Council of Succession shall appoint a Regent or Council of Regency as to them seem most expedient and if it shall be necessary to appoint a Council of Regency the provisions of Clauses (2) and (3) of Article XIX of this Part shall apply to such appointment.

(4) The Sovereign shall appoint a Regent or Council of Regency as to Him seems expedient to exercise His functions as a Ruler in the event of His being elected to the office of Yang di-Pertuan Agong or of His exercising the functions of Yang di-Pertuan Agong for a period exceeding fifteen days.

(5) Such Regent or Council of Regency shall cease to act upon the return of the Sovereign to the State or upon His recovery from incapacitation or His ceasing to hold the office or exercise the functions of Yang di-Pertuan Agong, as the case may be.

[18] We are of the view that the above contention of the petitioner that different powers are vested on a Regent appointed by the Council of Succession when compared with the powers vested on a Regent appointed by the petitioner himself as a Sovereign is unsustainable in the circumstances of this case. The petitioner seems to place much emphasis on specific phrases or words used in the Laws of the Constitution of Kelantan and consistently refers to the first respondent as the "Regent" which the petitioner

A distinguishes from the term "Sovereign". A perusal of the Laws of the Constitution of Kelantan would show that there is undoubtedly a distinction between a Regent and a Sovereign. We agree that the status of a Regent is not equal to a Sultan, Sovereign and Ruler of the State as contended by learned counsel for the petitioner. B However, we find that the distinction between these two words "Regent" and "Sovereign" do not have any effect on the royal prerogatives of the first respondent to appoint or revoke the appointment of any Members of the Council of Succession under the Laws of the Constitution of Kelantan and more importantly in this context of seeking to refer a question of C law pursuant to art. LXIII(2) First Part of the Laws of the Constitution of Kelantan.

[19] Coming back to the provision of art. XXIIA Second Part of the Laws of the Constitution of Kelantan, it is to be noted that D contextually, different terms are used depending on whether the Regent is appointed under limbs (a), (b) or (c) of cl. (1) of the said article. In the case of "intended absence" under limb (a), the Regent is to exercise "His functions during his absence from the State". In the case of the Sovereign being elected as Yang di-Pertuan Agong E or exercising the functions of the Yang di-Pertuan Agong under limb (c), the Regent is to exercise "His functions as a Ruler". We find no such limitations are imposed under limb (b) when the Regent is appointed upon the Sovereign being incapacitated. On this point we wholly agree with the views F expressed by Mohamad Arif Yusof, J in the High Court of Kuala Lumpur Judicial Review Application No. R3-25-379-2009 between Tengku Muhammad Fakhry Petra Ibni Sultan Ismail Petra (applicant) and Yang Maha Mulia Pemangku Raja Kelantan and Others (respondent) wherein in delivering his written Ruling and G Decision on 29 January 2010 on the question whether the subject matter of the application brought about by the applicant Tengku Muhammad Fakhry Petra against the Regent of Kelantan is "justiciable" at p. 24 had this to say:

> H Contextually, one can conclude that the Regent is intended to be constitutionally vested with all the necessary powers of the Sovereign during the period of incapacitation. The context certainly does not exclude the exercise of powers under Article VII. Nevertheless this power is temporary in nature and exists only I during the period of incapacitation of the Sovereign. In this context, the definition of 'His Royal Highness' would validly require the inclusion and not the exclusion of the Regent.

[20] The first respondent in the present case is also referred to in the Laws of the Constitution of Kelantan as "His Royal Highness". The term "His Royal Highness" is defined under art. IV First Part of the Laws of the Constitution of Kelantan as follows:

> … the Sultan of the State and includes His Successors and, where the context admits, His Predecessors; and, in the case of a Regency, includes the Regent, or, if there is a Council of Regency, such Council. (emphasis added).

On the other hand, the term "Sovereign" is defined under art. IV Second Part of the Laws of the Constitution of Kelantan to mean as the Sultan and Ruler of Kelantan.

[21] Learned counsel for the petitioner argued before us that the definition of "His Royal Highness" in art. IV First Part of the Laws of the Constitution of Kelantan to include the Regent is subject to an important rider, that is the Regent can only fall within the definition of "His Royal Highness" "where the context admits". According to him the phrase "His Royal Highness" does not necessarily refer to the Regent under all the provisions of the Laws of the Constitution of Kelantan, but the phrase "His Royal Highness" will always refer to the Sultan. Learned counsel for the petitioner further contended that the Regent was only to have the right to exercise the powers which are necessary to attend to the affairs of the State as provided for in the First Part of the Laws of the Constitution of Kelantan, namely all the Executive Authority of the Sultan as stated in art. X First Part of the Laws of the Constitution of Kelantan. To fortify his argument on this point learned counsel submitted that the First Part of the Laws of the Constitution of Kelantan deals only in respect of attending to the affairs of the State. The Second Part of the Laws of the Constitution of Kelantan on the other hand deals with succession of heirs, award of titles and dignities and royal prerogative. These are powers which are personal to the Sultan and only exercisable by him. The Regent therefore is not conferred with these powers under the Second Part of the Laws of the Constitution of Kelantan.

[22] With respect we could not agree with the above contention of the petitioner. A closer look at the Laws of the Constitution of Kelantan would reveal that in most of the provisions with regard to the act of carrying out royal functions the term "His Royal Highness" is used and this term "His Royal Highness" appears in both the First Part and the Second Part of the Laws of the Constitution of Kelantan. This much is clear from a reading of the relevant provisions of the Laws of the Constitution of Kelantan, amongst others can be highlighted as follows:

(a) Article VI First Part of the Laws of the Constitution of Kelantan – His Royal Highness as the Head of Religion of the State.

(b) Article XI First Part of the Laws of the Constitution of Kelantan – Executive authority to be in the name of His Royal Highness.

(c) Article XII First Part of the Laws of the Constitution of Kelantan – The appointment of the Menteri Besar by His Royal Highness.

(d) Article XIII First Part of the Laws of the Constitution of Kelantan – The appointment of the State Secretary, the State Legal Advisor and the State Financial Officer by His Royal Highness.

(e) Article XV(2)(b) First Part of the Laws of the Constitution of Kelantan - The withholding of consent for the dissolution of the State Legislative Assembly.

(f) Article XV2(f) First Part of the Laws of the Constitution of Kelantan – The appointment of any persons to Malay customary ranks, titles, honours and dignities and the designation of the functions appertaining thereto.

(g) Article XV2(g) First Part of the Laws of the Constitution of Kelantan – The regulation of royal courts and palaces.

(h) Article XVI First Part of the Laws of the Constitution of Kelantan – The appointment of a State Executive Council.

(i) Article XXVIIA First Part of the Laws of the Constitution of Kelantan – The power of pardon.

(j) Article LXIII First Part of the Laws of the Constitution of Kelantan – The right to refer questions of law to the Federal Court.

(k) Article IV(4) Second Part of the Laws of the Constitution of Kelantan – The right to refer questions of law to the Federal Court.

(l) Article VII Second Part of the Laws of the Constitution of Kelantan – The appointment or constitution of the members of the Council of Succession.

(m) Article VIIA Second Part of the Laws of the Constitution of Kelantan – The requirement of the taking of oath in the sitting and voting of the Council of Succession.

(n) Article XXXVI Second Part of the Laws of the Constitution of Kelantan – Establishment of Council of Advisers.

(o) Article XLIII Second Part of the Laws of the Constitution of Kelantan – Conferment of titles and dignities and institute Orders and Badges of Honour and Dignity.

(p) Article XLIV Second Part of the Laws of the Constitution of Kelantan – The creation of Bendahara, Temenggong, Laksamana Panglima and other ranks and titles formerly used.

[23] It is our judgment having noted that the definition of "His Royal Highness" includes the Regent, it is therefore clear that the Laws of the Constitution of Kelantan had envisaged for the Regent to have all the powers and to carry out the royal functions as the Sultan of Kelantan would have had His Royal Highness the Sultan of Kelantan not been incapacitated.

[24] We are of the view the contention of the petitioner that the powers vested on a Regent in carrying out his royal functions are only confined to the First Part of the Laws of the Constitution of Kelantan is untenable in the circumstances of this case. We do not think it should be interpreted in the way as suggested by the learned counsel for the petitioner, that is interpreting the provisions of the Laws of the Constitution of Kelantan according to the respective First Part and Second Part and not interpreting them as a whole. In this regard we are mindful of the fact that the answers to the questions posed to us turn essentially on the construction to be accorded to the relevant provisions of the State Constitution. For this we would therefore take guidance from the established principles applicable to the interpretation of a Constitution.

Basically, a Constitution being the supreme law of a State or Federation, it has to be interpreted differently from ordinary statute. On this point The Privy Council in *Hinds & Ors. v. The Queen; Director of Public Prosecutions v. Jackson Attorney General of Jamaica (Intervener)* [1976] 1 All ER 353 *inter alia* said:

> To seek to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would ... be misleading.

[25] Still on the important guide in interpretation of the Constitution, we would like to quote a passage of the judgment of the learned Chief Judge of Malaya, Arifin Zakaria in *Dato' Seri Ir Hj. Mohammad Nizar Jamaluddin v. Dato' Seri Dr. Zambry Abdul Kadir; Attorney General (Intervener)* [2010] 2 CLJ 925 where at p. 941 he had this to say:

> The Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument. An elementary rule of construction is, that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous.

[26] The question that has also to be answered here is whether during the incapacitation of the petitioner and during the pendency of the Regency the petitioner may exercise the powers of "His Royal Highness" under the Laws of the Constitution of Kelantan? We would answer this question in the negative. This is because due to the incapacitation of the petitioner as the then Sultan of Kelantan, it is the Regent of Kelantan and the Regent of Kelantan alone who is to exercise the powers attributed to "His Royal Highness" under the Laws of the Constitution of Kelantan. The petitioner may only exercise such powers upon returning to the State of Kelantan and assuming office as the Sultan of Kelantan. On the facts before us the petitioner did not do so upon returning to the State of Kelantan on or about March 2010. In fact the petitioner remains incapacitated and the first respondent continued to act as the Regent of Kelantan. In the light of the above, the petitioner is not permitted to exercise any power vested with "His Royal Highness" whilst there exists a Regency.

[27] We are of the view that there can be only one individual attending to affairs of the State of Kelantan at any one time. In this instance, due to the incapacitation of the petitioner, the first respondent as the Regent of Kelantan and the acting Ruler of the State of Kelantan is the only person entitled to exercise the powers of "His Royal Highness" within the meaning of the Laws of the Constitution of Kelantan. The petitioner being incapacitated cannot be exercising such a power unless he has recovered from such incapacitation. It therefore follows that the petitioner has no locus to refer a question of law to the Federal Court pursuant to art. LXIII(2) First Part of the Laws of the Constitution of Kelantan whilst the first respondent is the Regent, as the power to do so is vested solely in the hands of the first respondent until the Regency is brought to an end and the petitioner resumes his role as the Sultan of Kelantan.

Conclusion

[28] For the reasons abovestated we allow the jurisdictional objection of the first respondent. Consequentially, having allowed this jurisdictional objection we therefore dismiss both the petitions with no order as to costs.